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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE DREAM CENTER,

Defendant and Appellant,

v.

JOSHUA GUTHRIE et al.,

Plaintiffs and Respondents.

B262805

(Los Angeles County
Super. Ct. No. BC528189)

APPEAL from a judgment of the Superior Court of
Los Angeles County, John Shepard Wiley, Jr., Judge. Dismissed.

Rutan & Tucker, Maria Z. Stearns and Brandon L. Sylvia
for Defendant and Appellant.

McNicholas & McNicholas, Matthew S. McNicholas,
Douglas D. Winter; Ivie McNeill & Wyatt, Rodney S. Diggs; and
Esner, Chang & Boyer, Stuart B. Esner for Plaintiffs and
Respondents.

INTRODUCTION

The Dream Center appeals from an order compelling Joshua and Danielle Guthrie to arbitrate their individual employment-related claims and determining that the arbitrator should decide whether the arbitration agreement permits class-wide arbitration. The Dream Center argues that, although the trial court granted its motion to compel arbitration, the court effectively denied the motion because the court denied the Dream Center the precise relief it sought: arbitration of the individual claims only. Because the trial court's order neither denied the Dream Center's petition to compel arbitration nor finally resolved whether the agreement allows class arbitration, the order is not appealable. Therefore, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

The Dream Center is a Christian non-profit organization whose volunteers carry out its mission of providing assistance with homelessness, hunger relief, medical care, and education. When the Guthries applied to become volunteers at the Dream Center in 2011, they signed Volunteer Agreements that contained a dispute resolution and arbitration agreement. This provision provided: "Christian Alternative Dispute Resolution: In keeping with 1 Corinthians 6: 1-8, all disputes, which may arise between any Missionary-Volunteer and The Dream Center, shall be resolved in accordance with the Rules of Procedure for Christian Conciliation, Institute for Christian Conciliation. If efforts to conciliate or mediate the dispute fail, then the matter shall be resolved through binding arbitration. The decision of the

arbitrators shall be binding on both parties, and both parties submit themselves to the personal jurisdiction of the courts of California, both state and federal, for the entry of a judgment confirming the arbitrator's award. Each party shall bear their own costs, including attorney's fees, related to any mediation, conciliation or arbitration proceeding."

The Guthries began volunteering at the Dream Center in February 2013. After several months, they complained that the volunteer internship was unlawful because the Dream Center did not pay them for their work. The Guthries stopped working at the Dream Center after approximately six months.

The Guthries filed this action asserting individual and class claims, including failure to pay wages, failure to pay overtime, failure to provide accurate wage statements, waiting time penalties, and unfair business practices. The Dream Center filed a motion to compel arbitration of the Guthries' individual claims in accordance with the arbitration provisions in their Volunteer Agreements, and to stay the litigation pursuant to Code of Civil Procedure section 1281.4,¹ with the court retaining jurisdiction to enforce the award pursuant to section 1292.6. The Dream Center asked the court to enforce the arbitration agreements and to dismiss the Guthries' "allegations of class representation" because the arbitration agreements did not expressly permit arbitration of class claims.

The Guthries opposed the motion, arguing that the arbitration provision in the Volunteer Agreements was unenforceable. The Guthries argued, in the alternative, that if the court granted the motion to compel arbitration of the

¹ Statutory references are to the Code of Civil Procedure.

individual claims, the court should not dismiss the class claims but have the arbitrator determine “the availability of class arbitration.”

The court granted the motion, finding that “[t]he arbitration agreements are valid and enforceable.” The court, relying on this court’s subsequently-vacated decision in *Sandquist v. Lebo Automotive, Inc.* (2014) 228 Cal.App.4th 65, review granted November 4, 2014, S220812, ruled that “[t]he question of whether the arbitration must proceed as individual or class-wide arbitration is for the arbitrator. When an arbitration agreement is silent on the issue of class-wide arbitration, the determination of whether the parties agreed to class-wide arbitration is for the arbitrator, not the court.”

When the California Supreme Court granted review of *Sandquist v. Lebo Automotive, Inc.*, *supra*, 228 Cal.App.4th 65, the Dream Center renewed its motion. The trial court again granted the Dream Center’s motion to compel arbitration, stating: “The petition to compel arbitration is granted. The arbitrator will decide about class arbitration.” Relying on decisions by the United States Supreme Court and the California Courts of Appeal, the trial court again ruled that “[t]he question of whether the arbitration must proceed as individual or class-wide arbitration is for the arbitrator.” The Dream Center timely appealed.²

² The California Supreme Court subsequently affirmed this court’s decision in *Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233.

DISCUSSION

A reviewing court's jurisdiction over a direct appeal depends on the existence of an appealable judgment or order. (*Otay River Constructors v. San Diego Expressway* (2008) 158 Cal.App.4th 796, 801.) The right to appeal is strictly statutory. (*Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5; *Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1014.) Section 1294 "lists the types of orders associated with arbitration that may be appealed." (*Sunnyvale Unified School Dist. v. Jacobs* (2009) 171 Cal.App.4th 168, 174; see *Muao v. Grosvenor Properties* (2002) 99 Cal.App.4th 1085, 1088 [section 1294 "lists the orders and judgments that are appealable in judicial proceedings to enforce arbitration agreements"].) In particular, section 1294, subdivision (a), provides: "An aggrieved party may appeal from [a]n order dismissing or denying a petition to compel arbitration."³

The trial court granted the Dream Center's motion to compel the Guthries to submit their individual employment claims to arbitration. That order is not appealable. (See *Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119, 1122 ["an order granting a motion to compel arbitration is not an appealable order"]; see *State Farm Fire & Casualty v. Hardin* (1989) 211

³ Section 1294 states: "An aggrieved party may appeal from: [¶] (a) An order dismissing or denying a petition to compel arbitration. [¶] (b) An order dismissing a petition to confirm, correct or vacate an award. [¶] (c) An order vacating an award unless a rehearing in arbitration is ordered. [¶] (d) A judgment entered pursuant to this title. [¶] (e) A special order after final judgment."

Cal.App.3d 501, 506 “[w]hile an order denying a petition to compel arbitration is expressly made appealable by . . . section 1294, subdivision (a), the statute fails to make an order compelling arbitration appealable,” and therefore “an order compelling arbitration is nonappealable”]; accord, *Ashburn v. AIG Financial Advisors, Inc.* (2015) 234 Cal.App.4th 79, 94.) Instead, a party may seek appellate review of an order granting a motion to compel arbitration by petitioning for a writ of mandate or appealing from the subsequent judgment confirming the award. (§ 1294.2; see *Jenks v. DLA Piper Rudnick Gray Cary U.S. LLP* (2015) 243 Cal.App.4th 1, 7 “[a]n order granting a petition to compel arbitration is not appealable, but is reviewable on appeal from a subsequent judgment on the award”]; *Garcia v. Superior Court* (2015) 236 Cal.App.4th 1138, 1149 [“when warranted by the circumstances, immediate review of an order granting a motion to compel arbitration may be obtained by a petition for writ of mandate”].)

The Dream Center argues that the trial court actually denied its motion to compel arbitration because “the practical effect of the court’s orders was to deny [the] Dream Center the relief it sought — namely, an order compelling [the Guthries] to ***separately*** submit their ***individual*** claims to bilateral arbitration.” Describing the Guthries’ argument that the order is not appealable as an “intentionally-myopic view,” the Dream Center asserts that “the trial court’s order ‘granting’ [the] Dream Center’s motion left [the] Dream Center aggrieved.”

The trial court’s order, however, did not deny the Dream Center the relief it sought. The trial court ordered the Guthries’ individual claims to arbitration, which is what the Dream Center asked for. With respect to the class claims, the trial court did not

grant or deny the relief the Dream Center requested. Instead, the court ruled that the arbitrator would decide whether to grant or deny the relief the Dream Center requested by determining whether the agreement allows for arbitration of class claims.

That portion of the order is also not appealable. An order that the arbitrator is to decide whether the arbitration agreement permits arbitration of class claims is not one of the appealable orders listed in section 1294. It is also an intermediate ruling that contemplates further proceedings in arbitration. (See *Vivid Video, Inc. v. Playboy Entertainment Group, Inc.* (2007) 147 Cal.App.4th 434, 442 (*Vivid Video*) [“[u]nder section 1294, appealable arbitration orders require finality”]; *Reyes v. Macy’s, Inc.*, *supra*, 202 Cal.App.4th at pp. 1122-1123 [trial court’s order compelling arbitration of individual employment-related claims and staying class and representative claims was not appealable because trial court had “not yet determined whether some or all of [the class and representative claims] should eventually be dismissed or may warrant judicial relief”]; see also *Judge v. Nijjar Realty, Inc.* (2014) 232 Cal.App.4th 619, 628-629 [“an order constitutes the final determination of a case “where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree””].)

The court in *Vivid Video* addressed a similar issue; namely, “whether the trial court’s ruling as to *who decides* arbitrability is a final determination giving rise to a right to appeal.” (*Vivid Video*, 147 Cal.App.4th at p. 440.) In that case, the defendants filed a motion to compel arbitration, but “expressly limited their motion to compel arbitration to the question whether it was for the court or the arbitrators to decide the arbitrability of the claims.” (*Id.* at p. 436.) The trial court ruled that the court, not

the arbitrator, would decide arbitrability. (*Id.* at p. 439.) The Court of Appeal dismissed the defendants’ appeal, explaining that the trial court’s order “merely determines *who decides* arbitrability for purposes of further proceedings in the trial court as to *what issues* are arbitrable. It leaves the arbitrability of the causes of action in the complaint for future determination in the trial court. The order does not finally determine all issues before the trial court. The order is not sufficiently final to give rise to a right to appeal.” (*Id.* at pp. 442-443.)⁴ The trial court’s order in this case similarly “merely determines who decides arbitrability,” and assigns to the arbitrator the task of determining whether the arbitration agreement allows the Guthries to proceed with their class claims in arbitration. The order does not finally determine the rights and issues of the parties.⁵

⁴ The fact that in *Vivid Video* the court ruled that the issue of arbitrability was for the court, not the arbitrator, is not significant on the issue of appealability. The holding in *Vivid Video* applies equally to an appeal from an order that contemplates further proceedings in arbitration or in the trial court. (See *Vivid Video*, *supra*, 147 Cal.App.4th at p. 442.)

⁵ Although the Dream Center did not move to strike the class allegations pursuant to section 436, it did seek an order “dismissing the class allegations.” To the extent the Dream Center is appealing the denial of its motion to dismiss the class allegations, such an order is also not appealable. (See *In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 758 [“only an order that entirely terminates class claims is appealable”]; *Elijahjuan v. Superior Court* (2012) 210 Cal.App.4th 15, 19 [termination of class claims is “a prerequisite for the death knell doctrine”].)

Porter v. United Services Automobile Assn. (2001) 90 Cal.App.4th 837, cited by the Dream Center, is distinguishable. In that case the parties agreed that the dispute was arbitrable, but disagreed about the proper venue for the arbitration. The plaintiff asked the court to compel arbitration in California. The trial court ruled: “The petition to compel arbitration in California is denied. Counsel are advised to proceed forthwith to arbitration in New Jersey.” (*Id.* at p. 839.) The Court of Appeal concluded that the trial court’s order was appealable as “an order denying a petition to compel arbitration” within the meaning of section 1294, subdivision (a). (*Porter*, at p. 840.) The effect of the order in *Porter* was to deny the request for arbitration (with an “advisement” to proceed with arbitration in another venue). (*Porter*, at p. 839; see *State Farm Fire & Casualty v. Hardin*, *supra*, 211 Cal.App.3d at p. 507 [in determining whether order is appealable, court must consider order “in its entirety, with its substance and effect prevailing over mere form”].) Here, the effect of the court’s order is not to deny arbitration. It is just the opposite. The effect of the order is to compel arbitration of the individual claims, and to have the arbitrator determine whether the arbitration agreements allow for arbitration of class claims. Such an order is not appealable.⁶

⁶ The Dream Center argues in the alternative that this court should treat its appeal as a petition for writ of mandate. Although we may deem the appeal a petition for writ of mandate, we decline to do so because there are no “unusual circumstances” to justify such an exercise of discretion. (See *State Farm Fire & Casualty v. Hardin*, *supra*, 211 Cal.App.3d at p. 507.)

DISPOSITION

The appeal is dismissed. The Guthries are to recover their costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

KEENY, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.